

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6204 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

2. To be referred to the Reporter or not? -

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3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?

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G S R T C

Versus

HIMATSINH P BODANA

Appearance:

MR S.M. MAZGAONKAR FOR MR SN SHELAT for Petitioner

MR HK RATHOD for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/06/98

ORAL JUDGEMENT

By means of this writ petition, the petitioner has sought for quashing the judgment and award passed by the Industrial Tribunal, Ahmedabad on 13-11-1991 in Reference (IT) No. 468 of 1988 (Annexure-B).

2. The respondent was working as a conductor in the petitioner Corporation. He was dismissed on 10-12-86 but in the departmental appeal he was reinstated and the penalty of dismissal was substituted by putting him in service on basic pay. The workman preferred a reference before the Industrial Tribunal. The Industrial Tribunal by the order dated 13-11-1991 modified the punishment and directed annual increment of the respondent to be withheld for a period of three years with cumulative effect. The petitioner - Corporation was further directed to pay difference in wages payable to the concerned workman within three months from the date of publication of the award.

3. Heard learned counsel for the parties. The main contention of the learned counsel for the petitioner is that under the provisions of Section 11-A of the Industrial Disputes Act, 1947 the Tribunal has not been empowered with the power to substitute any minor punishment in place of an other minor punishment. Learned counsel for the petitioner informed the Court that the respondent has already retired.

4. It is a well settled general principle of law that if the authority or the Court has power to award relief of major punishment, it has also power to modify the relief of punishment and to award minor punishment. The provision of Section 11A of the Act empowers the Industrial Tribunal or National Tribunal to set aside the order of discharge or dismissal and direct reinstatement of workman on such terms and conditions, if any, as it deems fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

5. Learned counsel for the petitioner pointed out that there is finding of the Tribunal that the punishment imposed on the workman is very harsh, shocking and disproportionate, hence not sustainable under the law. I have considered the submissions made on behalf of the petitioner. The Tribunal, in the facts and circumstances of the case, modified the order punishment passed by the authority converting and imposing punishment of withholding of annual increment for a period of three years with cumulative effect which does not appear to be illegal or without jurisdiction.

6. Learned counsel for the petitioner could not point out any error or infirmity or impropriety in the award of the Tribunal. This petition lacks merits.

Accordingly, this writ petition is dismissed. As per the award, the arrears of wages, if not paid, shall be paid within three months from the day of receipt of a certified copy of this order.

7. Rule is discharged accordingly, with no order as to costs.

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